IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3101 of 1998

Date of decision: 16-12-1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KALUBHAI ALABHAI VANKAR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Ms.Siddhi Talati, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/12/98

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the prayer is for a writ of certiorari to quash the detention order dated 31st March, 1998 passed by the Police Commissioner, Rajkot City, and a writ in the nature of habeas corpus for immediate release of the petitioner from illegal detention.

2. The brief facts giving rise to this petition are as under:

The detaining authority aforesaid, considering three registered cases under the Bombay Prohibition Act against the petitioner and further considering the statements of three confidential witnesses, who requested to keep secret their names, addresses and identities, arrived at subjective satisfaction that the petitioner is bootlegger and his antisocial activities connected with his business of bootlegging were prejudicial for maintenance of public order. Accordingly the impugned order of detention was passed. This order has been challenged in the instant writ petition on two grounds.

3. The first contention is that there was four days' delay in dealing with the representation of the detenu petitioner. This contention is not only factually incorrect but has no legs to stand. Counter affidavit of Shri J.R. Rajput, Under Secretary tothe Government of Gujarat, explains the so called delay to the satisfaction of all concerned. It is mentioned in this paragraph that representation dated 13th April, 1998 made by the son of the detenu, addressed to the Chief Minister, was received in the office of the Chief Minister on 16th April, 1998. This delay between 13th April, 19988 and 16th April, 1998 is not to be explained by the State Government. The State Government was expected to deal with the representation expeditiously from the date it was received in the office and this date will be 16th April,1998. Since the representation was not addressed to the authority disclosed in the grounds of detention, rather it was addressed to the Chief Minister, it was forwarded by the office of the Chief Minister to the Home Department. It was considered by the Deputy Secretary of the Home Department on 17th April, 1998. File was then sent to the Principal Secretary, Home Department, on the same date. The Principal Secretary considered the representation on 18th April, 1998 and rejected the same on 19th April. Thus two days delay is sufficiently

explained. It is not a minute's delay, or every minutes delay which is to be explained by the State Government. This is not the ground for quashing the detention order.

4. Second contention has been that the activities of the petitioner were not prejudicial to the maintenance of public order. At the most, taking face value of the alleged activities, they were prejudicial for maintenance of law and order and as such preventive detention was hardly justified .

5. Coming to the grounds of detention, the first allegation against the petitioner is that he is running a distillery of country made liquor. He is storing country made liquor so manufactured and is also selling the same. Certain apprehensions were exhibited in the first portion of the grounds of detention that such activity of the petitioner is likely to result in hooch tragedy which occurred in the past. For this no specific data has been given. Second material against the petitioner which was considered is registration of three cases under the Prohibition Act, in which between 10 to 55 liters of country made liquor were recovered from the premises of the petitioner. These three registered cases do indicate that the petitioner is engaged in the business of manufacture, store and sale of country made liquor. This activity of the petitioner was rightly considered by the detaining authority to be bootlegging activity within the meaning of section 2(b) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short 'PASA'). However, from the grounds of detention it cannot be inferred that on the three incidents, when the premises of the petitioner was raided he created any situation which was prejudicial for maintenance of public order. There is no whisper that the petitioner,at the time of raid, offered resistance to the raiding party or created situation prejudicial to the maintenance of public order. These three cases do not give any inference about the petitioner's activities being prejudicial to maintenance of public order.

6. Mere involvement in bootlegging activity cannot be considered to be a sufficient ground for detaining a person under PASA. Further requirement is that the activities of such person must be prejudicial to maintenance of public order as explained in subsection (4) of section 3 and explanation to subsection (4) of section 3 of PASA. Thus the next question for consideration is whether the petitioner who is a bootlegger indulged in activities which were prejudicial for maintenance of public order. As pointed out earlier,

three registered cases were not sufficient to draw inference that his activities were prejudicial for maintenance of public order. Then comes the statements of three witnesses who are treated as confidential witnesses. They have deposed something regarding the activities of the petitioner, but a careful examination of the extracts of the statements of these witnesses would show that the detaining authority did not apply his mind properly to the statements given by the so called confidential witnesses.

7. The first witness narrated the incident dated 21-12-1997. His statement was recorded on 28th March, 1998. In short the narration given by this witness is that he knew the petitioner and his antisocial activities very well. On 21st December , 1997 the petitioner went to the place of business of the witness along with one jute bag containing liquor and asked the witness to keep the said bag there. The witness, knowing the activity of the petitioner, refused to keep the bags with him whereupon he was beaten. By that time people gathered there, whereupon the petitioner took out knife and threatened the witness as well as the persons who gathered there. On account of this activity of the petitioner people ran helter skelter and an atmosphere of fear prevailed. Shops were closed. The detaining authority did not care to mention the place where the business premises of the witness was situated . He also did not disclose the time at which this incident took place. Learned A.G.P., when asked to clarify this ambiguity, stated from the record that witness No.1 in his deposition gave time of occurrence but by mistake the detaining authority had not incorporated it in the grounds of detention. Be that as it may. It clearly reflects that the detaining authority mechanically reproduced the statement of the witness and committed material omission in recording the time and actual place of the incident. If the time and place of the incident was not specified the petitioner was prevented from furnishing effective reply in his defence. Merely because knife was shown to the witness and that the witness was beaten is not enough for holding that the situation adverse for maintenance of public order was created. If shops were closed due to such a minor incident it can hardly be said that the situation adverse to maintenance of public order was created.

8. The second witness was also interrogated on 28th March, 1998. These witnesses were apprehensive of the petitioner. Still they were available to the inquiry officer on the same day. One incident took place in

December 1997 and the other in March 1998. The second witness has stated that when he was passing on the road the petitioner doubted that the witness was a police informer. He threatened to kill. Upon this people of the locality collected. The petitioner ran towards them with open knife and threatened them to kill. Again, the road was deserted. People ran helter skelter. Witness was said to have been beaten, but it is not mentioned whether he was beaten by fist or kick blows or knife injury was caused. Not only this even place of the incident is not to be found in the extract of the statement of this witness which further indicates that the detaining authority acted mechanically in considering the statements of these two witnesses.

9. The third witness was interrogated a day thereafter on 29th March, 1998. He narrated one incident dated 22nd February, 1998. A person was drinking liquor near the house of the witness. He was having a liquor bag in his hand. Upon objection by the witness, not to consume liquor near his house, the said person abused the witness. This fact came to the knowledge of the petitioner, and he reached there and beat the witness. Again the usual story has been narrated that persons collected. They were chased by the petitioner with knife, and they rushed towards their house and closed the doors of their houses. In the statement of this witness also the detaining authority did not care to mention whether the place of activity of the petitioner was near the house of the witness. It is then difficult to understand how the petitioner from a far off place could have reached the scene of occurrence and could have known about the objection raised by the witness to the stranger who was consuming liquor near his house. This further shows non application of mind by the detaining authority to the statement of this witness.

10. In exercise of the jurisdiction under Article 226 of the Constitution of India this court will not sit in appeal over the subjective satisfaction of the detaining authority. However, this court, considering the face value of the material on record, can certainly observe whether the activities of the petitioner were prejudicial for maintenance of public order or not because this consideration is sine qua non for passing an order in the nature of preventive detention under PASA.

11. Learned A.G.P. has relied upon three cases in support of her contention that it is not a case where the

incident was confined between the petitioner and the three witnesses, rather members of the public who gathered at the spot were also affected because threat was extended to them and knife was shown to them. In this way, according to the learned A.G.P., situation prejudicial for maintenance of public order was created. The first case relied upon by her is Bhikhabhai Thakorbhai Patel vs. Commissioner of Police, 1989 (2) GLH 420. In this case the facts were that the detenu was running liquor den in public. His customers were also misbehaving after consuming liquor. Several incidents were cited where the detenu was taking side of the persons who took liquor at his den. The detenu beat innocent citizens. Repetition of such incidents, according to the Division Bench of this court, in this case was a situation indicative of disturbance of public order. This case can be distinguished on facts. Even if it is to be taken on its face value, the question is whether mere beating by the petitioner of the witnesses or innocent persons would amount to creation of a situation adverse to maintenance of public order. No doubt, the doctrine of judicial precedents requires that the verdict of Division Bench is binding upon single Judge, but if there is a verdict of the apex court to the contrary the single Judge has to be guided by the verdict of the apex court. The verdict of the apex court to the contrary will be discussed in the following portions of this judgment.

12. The second case relied upon by the learned A.G.P. has been of Gopal Gangaram Nepali vs. Commissioner of Police, 1996 (3) GLR 823. Learned counsel for the petitioner contended that this verdict has been overruled by me in another case which is factually incorrect. I have not overruled this verdict, rather I have distinguished this ruling on fact. In this case this court observed that for determining whether the activities of detenu affect public order or are in the nature and in the realm of law and order, length and breadth of the activity, purpose and effect of the activity and the effect on people are to be considered. It was further held that if detenu is engaged in an activity of dealing in liquor and is found to be involved in acts of terrorising the public in the locality, beat unknown persons on assumption that such person was police informant, and threaten the people that they would meet the same fate if any one informed the police, such activities are prejudicial to maintenance of public order. Detention of the detenu on these facts was justified in this case.

13. The third case cited by the learned A.G.P. is Mangabhai Chandubhai vs. State of Gujarat, 1993(1) GCD 554. In this case the Division Bench of this court considered several decisions of the apex court and tried to distinguish those cases by observing that this was not considered by the apex court or particular case was not considered by the apex court. I am afraid, such approach could be adopted by the High Court while considering the decisions of the apex court. However, on the facts of this case the witness gave statement which indicated that the petitioner had filthily abused and gave stock blow to one witness, and fist and kick blows to the other, as a result of which public ran helter skelter and even tempo of the public was disturbed. Some shop keepers closed their shops. On these facts it was held that situation adverse to the maintenance of public order was created.

14. From the above cases it appears that the view of this court has been that sole incident of beating by the petitioner to the witness or to the members of the public would create a situation adverse towards the maintenance of public order. Similarly, if a witness is beaten on suspicion that he is a police informant and the members of the public are also beaten and a sense of fear is created in the locality, then also public order is likely to be disturbed. However, this view does not seem to have been approved by the apex court at least in two cases.

15. In Lallan Prasad Chunnilal Yadav vs. Ramamurthy, AIR 1993 SC 396, the detenu was a bootlegger. His activities spread over a time, in which he was attributed to have threatened individuals by speaking words, or giving them fist and kick blows. Such activities were not considered by the apex court to be prejudicial to maintenance of public order, rather the view of the apex court on such incidents has been that such activities were patently prejudicial to the maintenance of law and order. The detention order was therefore quashed. In M. J.Shaikh vs. M.M.Mehta, 1995 (2) GLR 1268, the apex court examined two incidents narrated by the witness in like fashion. In one incident the petitioner purchased some goods from the witness who was a businessman. On demand of price the petitioner, instead of paying the price, dragged him out in public and on public road not only that the witness was beaten but a revolver was shown towards him and also towards the persons who gathered at the spot. On the second incident the facts were that the detenu had stopped the witness on the road and beat him on suspicion that he was a police informer. The petitioner was further alleged to have rushed towards

people who gathered there with revolver. These two incidents were considered by the apex court, and taking the allegation on their face value the apex court found it difficult to comprehend that they were incidents involving public order. The apex court observed that they were incidents directed against single individuals, having no adverse effect prejudicial to maintenance of public order disturbing the even tempo of the life or peace and tranquillity of the locality. Such casual and isolated incidents can hardly have any implication which may affect the even tempo of life or jeopardise public order and incite people to make further breaches of law and order which may result in subversion of public order.

16. Needless to point out that the view of the apex court in catena of decisions has been that an activity can be said to be prejudicial to maintenance of public order when it has the affect of disturbing even tempo of life of the locality or a community. It is not the act by itself, but the potentiality of the act which has effect on public order that is material. In view of the above cases and the guidelines laid down by the apex court from time to time it can be said that the incidents narrated by the witnesses as disclosed in the grounds of detention are incomplete and from such incidents it can hardly be said that situation adverse to maintenance of public order was created . Consequently the preventive detention was not justified. The impugned order of detention as such cannot be sustained. The writ petition, therfore, succeeds and is allowed. Detention order dated 31st March, 1998 as contained in annexure-A to the writ petition is hereby quashed. The petitioner shall be released forthwith if not wanted in some other case.

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